

# Memorandum

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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

**TO :** Bryant VanBrakle

**DATE:** January 12, 2004

**FROM :** Commissioners Harold J. Creel, Jr. and Joseph E. Brennan

**SUBJECT :** Summary of Oral Presentation of APL Limited re P3-03, P5-03, P7-03, P8-03, and P9-03

This summary of an oral presentation, which took place on January 8, 2004 at 10:00 AM at the Commission's offices at 800 North Capitol Street, NW, Washington, DC., is being submitted to the Secretary of the FMC for submission into the record of the above proceedings.

Present for the Commission were:

Commissioner Joseph E. Brennan  
Commissioner Harold J. Creel, Jr.  
Steven Najarian, Counsel to Commissioner Brennan

Present for the presenters were:

Robert T. Basseches, Shea & Gardner, Washington, DC  
Roy G. Bowman, Vice President, Government Affairs, APL Limited, Washington, DC  
David B. Cook, Shea & Gardner, Washington, DC  
John G. Reeve, Reeve & Associates, Yarmouthport, MA  
Robert F. Sappio, Senior Vice President, Trans-Pacific Market, APL Limited, Oakland, CA  
Eric R. Swett, Associate Counsel, APL Limited, Oakland, CA

The presenters made the following points:

APL does \$4 billion worth of business annually, with \$2 billion in the Pacific trade. It is the second largest ocean carrier for transport into, and out of, the United States. It is the largest intermodal carrier for the US. West Coast. It participates in the Maritime Security Program and VISA. APL owns APL Logistics.

Because the NVO petitions pending before the Commission have significant implications for the commerce of the United States, the FMC should thoroughly investigate the issues presented. APL disagrees with several of the claims and statements in the petitions, but the main purpose APL's presentation is merely to urge the Commission to investigate the matter thoroughly.

The ability to sign service contracts with beneficial cargo owners gives ocean carriers a competitive advantage. That advantage comes at a price. Ocean carriers such as APL invest in ships, terminals, and other maritime assets. NVOs, in contrast, have not invested in maritime infrastructure. The assets of NVOs do not benefit the maritime industry.

The profit margin for ocean carriers is low. APL will be very profitable this year. This profit results from both rate increases and cost-cutting.

APL's ownership of APL Logistics does not give APL an advantage. The two companies have separate profit-and-loss statements. APL deals with many logistics companies, not just its own. Only 26% of APL Logistics's business is with APL.

OSRA has helped APL to transform. It is good that OSRA has made varied pricing possible. OSRA is working and should not undergo a major change at this time.

The prospect that the NVOs may seek to have Congress amend the Shipping Act if the FMC denies the petitions is another reason for the Commission to look at the petitions thoroughly. Congress may need the input of an expert agency in considering the financial and policy implications of giving service-contract authority to NVOs. The FMC should develop a full record, even if the agency decides that it lacks the authority to grant the petitions.

If allowed to sign service contracts with their shipper customers, NVOs will aggregate greater volumes of cargo and will have great leverage against the ocean carriers. They will force APL and other ocean carriers out of business. Only the controlled carriers, which do not need to make a profit, will remain in business. Controlled carriers do not invest in infrastructure and innovation as APL does.

There is no indication that the large NVOs are suffering financially.

Giving service contract authority to only some NVOs will not work. On what basis does one distinguish between NVOs? Who will make the distinction? The NVOs themselves are not united as to what they want.

Under the Shipping Act, a service contract is defined in terms of ocean common carriers only. Congress rejected the Gorton amendment, which would have deleted the word "ocean."

The petitions, if granted, would effectively remove substantial authority from the FMC.

NVOs already have the ability to be creative in terms of logistics solutions.

The growth of service contracting after OSRA has resulted in lower average rates for shippers.

Shippers mainly want reliability, information on the status of their shipments, and a fair price. Price is not the only consideration for shippers.

There is no factual basis for granting the petitions, and doing so would disrupt the industry.

It is not right to level the playing field when the players are not the same. The vessel-operating carriers, not the NVOs, invest in maritime infrastructure.